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October 11, 2019

VIA ECF

Honorable Denis R. Hurley
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

**Re: Francisco Rodriguez and Aristides Alfredo Dillatoro v. Ridge Pizza Inc.
d/b/a Alfredo's Pizzeria, et. al.
Case No.: 2:16-cv-00254 (DRH)(AKT)**

Dear Judge Hurley:

We are the attorneys for defendants in the action and write pursuant to the latest Scheduling Order of Magistrate Judge A. Kathleen Tomlinson and your Individual Rule 3(A)(ii) to request a pre-motion conference with respect to (a) a proposed motion for summary judgment pursuant to Federal Rules of Civil Procedure 56 and (b) a proposed motion to dismiss pursuant to Federal Rules of Civil Procedure 37 (b)(2),(d). The nature of the case, the relevant procedural history and the bases for the proposed motions are set forth below in detail.

A. NATURE OF THE CASE

This is an action by two plaintiffs who were employed at a pizzeria for damages under the Federal Labor Standards Act and the New York Labor Law. The claims include (1) overtime pay, (2), spread of hours pay, and (3) non-disclosures, all of which are denied defendants.

B. PROCEDURAL HISTORY

Plaintiffs commenced this action by complaint dated January 2, 2016 (Docket #1). Defendants opposed and answered, denying the initial allegations of the complaint (Docket #18). The first round of paper discovery was completed whereupon plaintiffs moved to amend the complaint (Docket #35). Over defendants' opposition the Magistrate Judge granted the motion (Docket #39) and an amended complaint dated May 11, 2017 was served and filed (Docket #40). Defendants denied the material allegations of the amended complaint (Docket #45). A second

round of paper discovery ensued. The Magistrate Judge amended the Scheduling Order on multiple occasions by amended Scheduling Order and by decisions on letter motions due to plaintiff's failure to move the case forward (see Docket #26, 45, 53). The last modification required depositions and discovery to be completed on or before September 20, 2019, copy annexed hereto as Schedule A. Depositions were scheduled for September 16, 2019 at which time all parties were to be present. All defendants and plaintiff Aristides Alfredo Dillatoro appeared and were deposed. However, plaintiff Francisco Rodriguez failed to appear. Plaintiffs' counsel advised at that time that Francisco Rodriguez was out of the Country and had been for some time and would not be appearing. He further advised that he would move by letter motion to withdraw as counsel. To date no such letter motion has been made. Defendants now desire to dismiss the action by plaintiff Francisco Rodriguez by reason of his violation of the Scheduling Order and failure to appear for deposition and for summary judgment as to plaintiff Francisco Rodriguez (and plaintiff Francisco Rodriguez if the Rule 37 motion is not granted).

C. BASES FOR RELIEF

The bases for relief under Rule 37 and Rule 56 are set forth below in detail. Based thereon leave to move should be granted.

1. RULE 37

The motion pursuant to Rule 37 is based on the last modification of the Scheduling Order of the Magistrate Judge which required discovery to be complete by September 20, 2019 and the failure of Plaintiff Francisco Rodriguez to appear for deposition despite the deposition have been duly scheduled in accordance with the Scheduling Order. No excuse was offered for plaintiff's failure to appear except his prolonged absence from the Country and counsel's complete absence of knowledge as to plaintiff's intentions. These acts and omissions warrant dismissal since they constitute a blatant disregard of discovery obligations and severely prejudice defendants.

2. RULE 56

The amended complaint contains the standard allegations for a case of this type, to wit: plaintiffs worked 12 hours per day for 6 days a week and did not receive overtime pay or spread of hours pay and did not receive required disclosures. The documentary evidence consists of signed time clock punch card reflecting the days and hours worked, the computation of straight time and overtime pay, and the amount received by plaintiffs. The appearing plaintiff confirmed this documentary evidence, as did defendants. These amounts belie plaintiffs' case. Moreover, the signed disclosure documents reflect compliance with disclosure requirements.

D. CONCLUSION

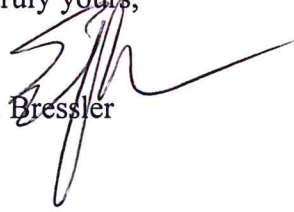
The action as to plaintiff Francisco Rodriguez should be dismissed by reason of his failure to appear for and attend his deposition. The action in toto should be dismissed based on

documentary and testimonial evidence. Thus, defendants respectfully request a pre-motion conference.

Thank you for your consideration of this request.

Very truly yours,

Eric J. Bressler

A handwritten signature in black ink, appearing to be 'EJB', with a long horizontal flourish extending to the right.

EJB/cs

cc: Steven J. Moser, Esq. (via ecf)

8/8/2019

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Subject: Activity in Case 2:16-cv-00254-DRH-AKT Rodriguez et al v. Ridge Pizza Inc. et al Order on Motion for Extension of Time to Complete Discovery
From: ecf_bounces@nyed.uscourts.gov
Date: Wed, Aug 07, 2019 5:26 pm
To: nobody@nyed.uscourts.gov

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U.S. District Court

Eastern District of New York

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The following transaction was entered on 8/7/2019 at 5:26 PM EDT and filed on 8/7/2019

Case Name: Rodriguez et al v. Ridge Pizza Inc. et al

Case Number: 2:16-cv-00254-DRH-AKT

Filer:

Document Number: No document attached

Docket Text:

ORDER granting DE [53] Motion for Extension of Time to Complete Discovery. The deadline for depositions and fact discovery is extended to September 20, the deadline for letter requests for a pre-motion conference is extended to October 15, 2019, the date for filing the joint pre-trial order is extended to January 15, 2020, and the pretrial conference is adjourned to January 8, 2019 at 11 a.m. Ordered by Magistrate Judge A. Kathleen Tomlinson on 8/7/2019. (Degennaro, Christopher)

2:16-cv-00254-DRH-AKT Notice has been electronically mailed to:

Eric J. Bressler ebressler@wbglawyers.com

Steven John Moser smoser@moseremploymentlaw.com, jmoser@moseremploymentlaw.com

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